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Luster

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

21468

FILE: B-204556

DATE: April 13, 1982

MATTER OF: Isometrics, Inc.

**DIGEST:**

1. Determining whether a party is an "interested party" under GAO's Bid Protest Procedures involves consideration of party's status in relation to protested procurement and the nature of the issues involved in the protest. GAO finds that while protester refused to extend its bid prior to its expiration, protester is an interested party because protest essentially involves propriety of agency's decision not to cancel solicitation after premature bid opening.
2. GAO finds that protester's protest against premature opening was not included in earlier filed protest contending that award should have been made to it as the low bidder. Later-raised bases of protest must independently satisfy the timeliness criteria of GAO's Bid Protest Procedures. Protest is untimely where record shows that protester knew 2 months before filing protest that agency had prematurely opened bids.
3. An agency may, under certain circumstances, accept a bid which has been revived after its initial expiration, but it should not accept a revived bid when to do so would compromise the integrity of the competitive bidding system. Here, GAO finds no compromise of the competitive bidding system on account of agency's acceptance of awardee's revived bid.
4. The contracting officer has extremely broad authority to decide whether to cancel an invitation and readvertise. Where issue is whether to cancel because eligible bids are at unreasonable prices, the contracting officer's determination concerning price

reasonableness is a matter of administrative discretion which GAO will not question unless the determination is unreasonable. GAO finds that the protester has failed to show that the bid of awardee was unreasonably high.

Isometrics, Inc. (Isometrics), protests the award of a contract under invitation for bids (IFB) No. DLA700-81-B-1156 issued by the Defense Logistics Agency (DLA). The IFB was for truck-mounted water distributors.

Isometrics contends (1) the IFB should have been canceled because of prejudice to its competitive position as a result of the premature opening of bids 8 days before the scheduled bid opening; (2) the solicitation should have been canceled because the awardee improperly revived its bid; and (3) the solicitation should have been canceled because the successful bid was unreasonably high.

For the reasons set forth below, we find the protester's contentions either untimely or for denial.

The IFB was issued on May 26, 1981. Five amendments were made, with amendment No. 5 extending the bid opening from August 5, 1981, to August 13, 1981. Through administrative error, however, six bids were opened on August 5, 1981 and posted for 90 minutes before the error was discovered and the bids resealed. On August 7, 1981, the contracting officer notified the six bidders in writing of the premature opening and advised them that they could change and resubmit their bids by the August 13, 1981, bid opening date. On the scheduled opening date, 11 bids were received by DLA, with Isometrics bidding \$45,928 to \$42,905 per unit, depending on destination and shipping.

By letter dated August 24, 1981, and received by this Office on August 28, 1981, Isometrics protested the award of a contract to any other bidder except itself because under its evaluation of FOB origin for shipping, shipping weights, and shipping dimensions, Isometrics was the low bidder. Isometrics also requested a complete copy of the Government's evaluation of bids, including freight evaluation and further requested that no award be made until it had studied the Government's evaluation.

Because Isometrics' bid was scheduled to expire on October 12, 1981, DLA requested that Isometrics and three other companies extend their bids an additional 30 days. By mailgram dated October 8, 1981, Isometrics indicated that it could not extend its bid and requested that its bid be withdrawn. By a mailgram of the same date and received by this Office on October 9, 1981, Isometrics protested the award of a contract to anyone because its bid was opened before the bid opening date, its price made public and it had to lower its price in an attempt to remain the low bidder.

Of the other three bidders requested to extend, two refused to extend their bids. The third bidder, Gregory Engineering Corporation, did extend its bid for the additional 30-day period, but was subsequently rejected as nonresponsive.

Nevertheless, a bidder not requested to extend, Wales Metal Products, Inc. (Wales), informed the agency in a letter dated November 13, 1981, that its bid had not been withdrawn or terminated. The agency then determined that the company had revived its bid through its own initiative. Wales' letter extended its bid to February 1, 1982. On February 1, 1982, DLA awarded the contract to Wales.

DLA contends that since Isometrics' bid expired by its own terms on October 12, 1981, the company is not an interested party under our Bid Protest Procedures, 4 C.F.R. part 21 (1981). DLA cites our decisions in Risi Industries, Inc., Westmont Industries, B-191024, April 27, 1978, 78-1 CPD 329, and Don Gleene Contractor, Inc., B-198612, July 28, 1980, 80-2 CPD 74, in urging that Isometrics' protest be dismissed.

A party must be "interested" under our Bid Protest Procedures, 4 C.F.R. part 21, supra, in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement and the nature of the issues involved. See, generally, American Satellite Corporation--Reconsideration, B-189551, April 17, 1978, 78-1 CPD 289. We have refused to consider a protester's objections to an agency's finding that the protester's low

bid was nonresponsive where the protester refused to extend its bid acceptance period despite a specific request to do so by the procuring agency. Risi Industries, Inc.; Westmont Industries, supra. This was because the protester no longer had a bid which the Government could accept even if we were to have sustained the protest. Don Greene Contractor, Inc., supra. Here, however, Isometrics is no longer protesting that an award should have been made to it, but instead is protesting that DLA should have canceled the IFB and resolicited the procurement. Since such action would have permitted Isometrics an opportunity to rebid, we find the company to be an interested party.

DLA further argues that Isometrics' protest of the premature opening of bids should have been made within 10 working days after notification by the contracting officer of the error. Because Isometrics' protest of August 28, 1981, did not raise the issue of the premature bid opening, but instead alleged that it was the low bidder and protested award to anyone else, DLA takes the position that Isometrics' protest on this issue is untimely. Nevertheless, DLA notes that the premature opening of bids is a serious matter but was an unusual occurrence and does not reflect a recurring problem at the installation.

Under section 20.2(b)(2) of our Bid Protest Procedures, protests shall be filed no later than 10 days after the basis for protest is known or should have been known, whichever is earlier. The record shows that the contracting officer's notification of August 7, 1981, advised the bidders that their bids were prematurely opened, were being resealed and that if they desired to change their prices, they could do so. Also, the record does not show that any of the bidders besides Isometrics knew the prices of the prematurely exposed bids. Isometrics alleges that at least seven abstract services were present when the bids were opened on August 5, 1981, and, in this regard, Isometrics has provided documentation showing that one abstractor made an abstract of the bids and sent it to Isometrics and "two other interested bidders," which Isometrics received on August 10, 1981.

Under the circumstances we agree with DLA that Isometrics should have filed a protest with our Office within 10 working days after the contracting officer's notification of premature bid opening or at least within 10 working days of learning that there was at least one bid abstractor present at the opening. While Isometrics knew as early as August 10, 1981, that at least one abstract of the premature opening was made, the company did not file a protest regarding the prejudice to it flowing from the premature opening until over 2 months later.

Isometrics argues that it did file a protest in a timely manner when it submitted a protest to our Office on August 28, 1981, a date which Isometrics claims was within the 10-working-day requirement of our Bid Protest Procedures. While recognizing that its protest of that date did not specifically raise DLA's premature opening as one of its grounds, Isometrics, nevertheless, asserts that the protest did satisfy the timeliness requirements under our Bid Protest Procedures and thus allowed Isometrics to provide additional support for its protest on October 9, 1981. Isometrics goes on to argue that its objection regarding the premature bid opening is not entirely separate from its initial protest, but, rather, is in the nature of additional support for its timely raised objection that the award could not be made to anyone else but it.

In our opinion, Isometrics raised a new and independent ground of protest on October 9, 1981. Isometrics' prior protest was based solely on the company's belief that it should be evaluated the low bidder by DLA. We have held that later-raised bases must independently satisfy the timeliness criteria of our Bid Protest Procedures. James G. Biddle Company, B-196394, February 13, 1980, 80-1 CPD 129.

Isometrics contends that Wales did not properly revive its bid. While recognizing that "in the proper circumstances the Government may accept a bid, once expired, which has subsequently been revived by the bidder," Isometrics argues that revival is not permitted if it would compromise the integrity of the competitive procurement system. Isometrics notes that at the time Wales attempted to revive its bid, all bids other than Gregory's had expired for several weeks.

Consequently, Isometrics believes that the integrity of the competitive procurement system was placed in jeopardy by the revival because Wales' tardy attempt to revive its bid gained it an advantage not sought by, or available to, the other bidders, that is, the advantage of renewing its bid in short increments or allowing it to lapse as Wales' interests dictated.

Furthermore, Isometrics asserts that in addition to being tardy, Wales' attempt to revive its bid was deficient because it did not define any period of time for bid acceptance. Isometrics argues that by leaving the acceptance period undefined, Wales could have withdrawn or revived its bid at will, thus limiting the rights of the Government to award a contract to whatever Wales' own particular interests dictated. Isometrics further argues that the fact that Wales submitted a letter dated December 17, 1981, to DLA which stated that its bid was extended to a specific date, February 1, 1982, did not change the situation. In Isometrics' opinion, allowing a bidder at its option to extend its bid for indefinite periods of time creates an auction atmosphere prejudicial to the competitive procurement system.

We have recognized that in certain circumstances it may be appropriate for an agency to accept a bid which has been revived after its initial expiration. See Missile Van & Storage Company, Inc., and MAPAC, Inc., a joint venture, 53 Comp. Gen. 775 (1974), 74-1 CPD 193. Since expiration of the acceptance period confers on the bidder a right to refuse to perform a contract subsequently awarded, a bidder may waive such right if, following expiration of the acceptance period, the bidder is still willing to accept an award on the basis of the bid as submitted. Mil-Std Corporation, B-197610, March 7, 1980, 80-1 CPD 182. However, a revived bid should not be accepted when to do so would compromise the integrity of the competitive bidding system. 42 Comp. Gen. 604 (1963).

In support of its contention that the integrity of the competitive bidding system was compromised, Isometrics cites our decision, Veterans Administration--request for advance decision, 57 Comp. Gen. 228 (1978), 78-1 CPD 59, aff'd sub nom, B-191019, February 27, 1978, 78-1 CPD 159. In that case, the Veterans Administration

could not make award during the initial bid acceptance period, in part because of delay incident to resolving a mistake in bid claim by the low bidder. The original low bid lapsed and a subsequent request for extension was specifically denied by the low bidder. Later, the low bidder reversed its position and agreed to extend its original bid acceptance period. We held that the low bidder apparently sought to limit the rights of the Government to award a contract as the low bidder's own particular interests dictated. We therefore concluded that the low bidder's on-again, off-again behavior adversely affected the integrity of the competitive bidding system such that the interests of the Government would not be well served by awarding a contract to that bidder.

Here, the record shows that at the time Wales' bid was revived, all bids except one had either expired or were determined to be nonresponsive. Although its bid also expired at the end of the 60 days following bid opening, October 12, 1981, we do not think that Wales had any reason to assume it would be awarded a contract since there were several other bidders with lower bids. Thus, there was no reason, in our opinion, for Wales to grant an extension of its bid prior to the October 12, 1981, expiration date. When it apparently learned later that most of the other lower bidders had refused to extend their bids, Wales elected to stand by its submitted bid. The record further shows that at the request of the agency, Wales promptly agreed to an extension of its bid until February 1, 1982, and thus assumed the risks of the marketplace for the period of that extension. Consequently, we conclude that under the circumstances, Wales properly revived its bid. See Guy F. Atkinson Company, et al., 55 Comp. Gen. 546 (1975). 75-2 CPD 378; 40 Comp. Gen. 371 (1966).

Isometrics contends that under the requirements of Defense Acquisition Regulation (DAR) § 2-404.1(a) and (b) (1976 ed.), the contracting officer had to reject all bids and cancel the IFB because all the eligible bids were at unreasonable prices. Isometrics points out that Wales' unit prices were \$4,000 higher than its own. Isometrics further points out that Wales was not among the four bidders from whom the contracting officer requested an extension of the acceptance period.



From this fact, Isometrics concludes that the contracting officer determined at the time of his request that the other seven bidders had submitted unreasonably high prices. Isometrics argues that with the agency's determination that Gregory Engineering Corporation's bid was nonresponsive, no reasonably priced bid remained eligible for award.

The authority vested in the contracting officer to decide whether or not to cancel an invitation and readvertise is extremely broad. Fowler's Refrigeration and Appliance, Inc.--Reconsideration, B-201389.2, May 11, 1981, 81-1 CPD 368. DAR § 2-404.1(b) authorizes cancellation for compelling reasons where "all otherwise acceptable bids received are at unreasonable prices." DAR § 2-404.1(b)(vi). We have stated that a determination concerning price reasonableness is a matter of administrative discretion which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Culligan Incorporated, Cincinnati, Ohio--Reconsideration, B-189307, November 7, 1977, 77-2 CPD 345.

Here, we do not think the fact that the bid of Wales exceeded the protester's bid by several thousand dollars per unit indicates that its bid was unreasonably high. Nor can we conclude that merely because the contracting officer did not request an extension of the bid acceptance period from Wales, that this meant he had determined that its bid was unreasonably priced. Rather, it is our opinion that the only thing that the contracting officer's request for an extension of the bid acceptance period shows is that the four companies from which he did request an extension were the four lowest bidders of the 11 bidders who submitted bids.

We dismiss Isometrics' protest in part and deny it in part.

*Milton J. Fowler*  
for Comptroller General  
of the United States